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May 6, 2011



Via Email and U.S. Mail

Norman Knopf, Esquire  
401 East Jefferson Street  
Suite 206  
Rockville, Maryland 20850

RE: My File No.: 330-155  
*Friends of Frederick County, et al. v. City of Frederick*

Dear Mr. Knopf:

I am in receipt of your letter dated May 5, 2011 and provide the following response:

1. As noted in our letter to you dated April 15, 2011, we "were disappointed by your draft stipulations, in that they are non-neutral and argumentative and not, in our opinion, a good faith attempt to come to agreement regarding the undisputed facts." Our opinion of your draft stipulations has not changed.
2. I, of course, disagree that the draft stipulations of fact we sent to you on April 28, 2011 are "extremely broad" and accomplish "nothing." They are neutral, non-argumentative statements of undisputed facts upon which the Court may make legal conclusions regarding whether the City's actions complied with the applicable statutes. The mere fact that the Court must review the documents and videos presented to it does not, by any means, render our draft stipulations somehow ineffective. The documents and videos showing what occurred during the annexation process speak for themselves and there is thus no dispute of fact as to what they contain. The only question is whether what they contain complied with the applicable statutes. I repeatedly stated this during our May 3 telephone conversation.
3. Judge Tisdale never made any statements other than that he believed there were some unidentified disputes of material fact. He never said what facts

THE UNITED STATES OF AMERICA

DEPARTMENT OF JUSTICE

OFFICE OF THE ATTORNEY GENERAL

WASHINGTON, D. C.

MEMORANDUM

TO THE ATTORNEY GENERAL

FROM THE ASSISTANT ATTORNEY GENERAL

RE: [Illegible text]

[Illegible text]

[Illegible text]

[Illegible text]

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he believed were disputed. Thus, he did not make anything "clear." As I told you in our May 3 telephone conversation, I believe that the comments in your summary judgment pleadings in which you were equivocal regarding the presence of disputed facts may be what caused Judge Tisdale to believe that there were such disputes, or at least contributed to his belief. Contrary to your assertion, as the trier of fact and arbiter of legal issues, the Judge cannot "avoid" having to "listen to recordings, watch videos, read minutes of the various meetings and wade through the extensive paper record." He will need to do so regardless of whether he decides the case on cross-motions for summary judgment or at a bench trial.

4. The stipulations Plaintiffs have proposed (previously) are unacceptable, as we have told you and as I have noted above. Merely re-submitting them to us through your letter of May 5 does not render them acceptable. They are exactly the same as before. Moreover, your re-submission of your previous stipulations is not what we agreed to in our telephone conversation of May 3. Rather, you told me that you were going to send me a one sentence stipulation to add to our draft stipulations. Your one sentence stipulation was going to contain a neutral statement regarding the fact that the City did not formally adopt by resolution the annexation plans. You have not done what you explicitly said you would do, and instead have simply re-submitted to us your previous unacceptable stipulations. Contrary to your claim that I did not state that you "incorrectly set forth such facts" in your draft stipulations, I have done so repeatedly. Your draft stipulations are argumentative and one-sided and I told you that we will not agree to them specifically because we disagree with them.
5. Our draft stipulations are appropriate in that they inform the Court that the parties agree as to what occurred and what documents were submitted (and that the documents and videos speak for themselves), and then leave it to the Court to determine whether what occurred met the requirements of the applicable statutes. I cannot fathom why you believe they are somehow inappropriate or an "embarrassment." The Judge may, as you intimate, receive such stipulations and nevertheless still believe that a trial is necessary, but since the Judge never stated what he believed is in dispute, we have no way of knowing the potential outcome of submitting such stipulations to the Court. As I said on the phone, I believe that the parties

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have nothing to lose in attempting such an effort, even if ultimately the Court denies our renewed cross-motions and still requires a trial. I would also note that your contention that "such a submission would be an embarrassment because it clearly contradicts the judge's instructions" is incorrect for the simple reason that the Judge did not provide us with any "instructions."

Our draft stipulations of fact do not in any way preclude you from making arguments in the expected renewed cross-motions for summary judgment, in which the parties will be asserting new and updated arguments based upon the neutral facts. You have an obligation to make a persuasive argument through your renewed cross-motion for summary judgment rather than through your draft stipulations of fact. Our draft stipulations are neutral, allowing both sides to use them to argue regarding what the documents and videos mean and whether they comply with the applicable statutes. Your proposed stipulations are not neutral, are argumentative, and are more akin to what the content of your renewed cross-motion should contain.

6. I do not believe I ever said that the Plaintiffs' stipulations state legal conclusions necessarily. Rather, I said that it is the Judge's duty to make legal conclusions and, that, to the extent that your stipulations or any Requests for Admissions you may submit in the future contain legal conclusions, we will not either agree to them nor admit them. I note in this regard that during our telephone conversation, you threatened that if the City does not agree *in toto* with your draft Stipulations, you intend to regurgitate the stipulations as Requests for Admissions and "make us" admit to them. You stated that if we did not then admit to all of your Requests for Admissions, you would seek sanctions against us. I informed you that despite your threat, the City would not admit to Requests for Admissions if it is inappropriate to do so and that we would not capitulate to your inappropriate draft stipulations based on such threats.

Your "new" proposed stipulations (in paragraph 6 of your letter) are no different than the ones you previously submitted to us and that we rejected as inappropriate and not in good faith. Merely re-submitting them to us in no way alters our position. As I noted above, your submissions also do not comply with what you explicitly told me you were going to do.

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7. While summary judgment was the preferred method of resolving this case, it does not appear that you are willing to agree to neutral, appropriate stipulations of fact that do not favor one side or the other. Instead, you clearly seem to be seeking a tactical advantage, to which we will not acquiesce. As I informed you during our phone conversation, if your Requests for Admissions mirror your draft stipulations of fact, which are argumentative, the City would of course not be obligated to admit any of them. I would also remind you that seeking sanctions without justification is itself sanctionable conduct.

I hope you will reconsider your position.

Sincerely yours,

KARPINSKI, COLARESI & KARP



BY: Victoria M. Shearer

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